

PUBLIC REPORT OF EXAMINATION OF THE CLAIMS
PRACTICES OF THE
EXPLORER INSURANCE COMPANY (THE)
NAIC # 40029 CDI # 3004-9

AS OF SEPTEMBER 30, 2001

STATE OF CALIFORNIA



DEPARTMENT OF INSURANCE
FIELD CLAIMS BUREAU

TABLE OF CONTENTS

SALUTATION.....	1
SCOPE OF THE EXAMINATION.....	2
CLAIMS SAMPLE REVIEWED AND OVERVIEW OF FINDINGS.....	3
TABLE OF TOTAL CITATIONS.....	4
SUMMARY OF CRITICISMS, INSURER COMPLIANCE ACTIONS AND TOTAL RECOVERIES.....	5

CALIFORNIA DEPARTMENT OF INSURANCE

Consumer Services and Market Conduct Branch
Field Claims Bureau, 11th Floor
Ronald Reagan State Office Building
300 South Spring Street
Los Angeles, CA 90013



June 18, 2002

The Honorable Harry W. Low
Insurance Commissioner
State of California
45 Fremont Street
San Francisco, California 94105

Honorable Commissioner:

Pursuant to instructions, and under the authority granted under Part 2, Chapter 1, Article 4, Sections 730, 733, 736, and Article 6.5, Section 790.04 of the California Insurance Code; and Title 10, Chapter 5, Subchapter 7.5, Section 2695.3(a) of the California Code of Regulations, an examination was made of the claims practices and procedures in California of:

Explorer Insurance Company (The)

NAIC # 40029

Hereinafter referred to as the Company.

This report is made available for public inspection and is published on the California Department of Insurance web site (www.insurance.ca.gov) pursuant to California Insurance Code section 12938.

SCOPE OF THE EXAMINATION

The examination covered the claims handling practices of the aforementioned Company during the period 08/31/00 through September 30, 2001. The examination was made to discover, in general, if these and other operating procedures of the Company conform with the contractual obligations in the policy forms, to provisions of the California Insurance Code (CIC), the California Code of Regulations (CCR), the California Vehicle Code (CVC) and case law. This report contains only alleged violations of Section 790.03 and Title 10, California Code of Regulations, Section 2695 et al.

To accomplish the foregoing, the examination included:

1. A review of the guidelines, procedures, training plans and forms adopted by the Company for use in California including any documentation maintained by the Company in support of positions or interpretations of fair claims settlement practices.
2. A review of the application of such guidelines, procedures, and forms, by means of an examination of claims files and related records.
3. A review of consumer complaints received by the California Department of Insurance (CDI) in the most recent year prior to the start of the examination.

The examination was primarily conducted at the Companies' claims office in Valencia, California. A brief visit for file review was also made to the San Diego, California claims office.

The report is written in a "report by exception" format. The report does not present a comprehensive overview of the subject insurer's practices. The report contains only a summary of pertinent information about the lines of business examined and details of the non-compliant or problematic activities or results that were discovered during the course of the examination along with the insurer's proposals for correcting the deficiencies. When a violation is discovered that results in an underpayment to the claimant, the insurer corrects the underpayment and the additional amount paid is identified as a recovery in this report. All unacceptable or non-compliant activities may not have been discovered, however, and failure to identify, comment on or criticize activities does not constitute acceptance of such activities.

Any alleged violations identified in this report and any criticisms of practices have not undergone a formal administrative or judicial process.

CLAIM SAMPLE REVIEWED AND OVERVIEW OF FINDINGS

The examiners reviewed files drawn from the category of Closed Claims for the period August 31, 2000 through September 30, 2001, commonly referred to as the “review period”. The examiners reviewed 373 Personal Auto (PA), 64 Commercial Auto (CA) and 140 Homeowner claim files. The examiners cited 84 claims handling violations of the Fair Claims Settlement Practices Regulations and/or California Insurance Code Section 790.03 within the scope of this report.

Explorer Insurance Company (The)			
CATEGORY	CLAIMS FOR REVIEW PERIOD	REVIEWED	CITATIONS
PA Collision	4477	101	9
PA Comprehensive	1195	60	5
PA Property Damage	4835	61	11
PA Bodily Injury	1700	37	13
PA Uninsured Motorist Bodily Injury	169	40	18
PA Uninsured Motorist Property Damage	227	50	11
PA Total Losses	155	24	12
CA Collision	234	40	0
CA Comprehensive	81	24	0
Homeowner	1340	140	5
TOTALS	14413	577	84

TABLE OF TOTAL CITATIONS		
Citation	Description	
CIC § 790.03(h)(3)	The Company failed to adopt and implement reasonable standards for the prompt investigation and processing of claims arising under insurance policies	13
CCR §2695.7(c)(1)	The Company failed to provide written notice of the need for additional time every thirty-calendar days.	13
CCR §2695.7(b)	The Company failed, upon receiving proof of claim, to accept or deny the claim within forty days.	10
CCR §2695.5(e)(3)	The Company failed to begin investigation of the claim within fifteen calendar days.	6
CCR §2695.8(b)(1)	The Company failed to explain in writing for the claimant the basis of the fully itemized cost of the comparable automobile.	6
CCR §2695.8(b)(1)(C)	The Company failed to document the determination of value. Any deductions from value, including deduction for salvage, must be discernable, measurable, itemized, and specified as well as be appropriate in dollar amount.	6
CCR §2695.4(a)	The Company failed to disclose all benefits, coverage, time limits or other provisions of the insurance policy.	5
CCR §2695.5(e)(2)	The Company failed to provide necessary forms, instructions, and reasonable assistance within fifteen calendar days,	5
CCR §2695.5(b)	The Company failed to respond to communication within fifteen calendar days.	5
CCR §2695.7(b)(1)	The Company failed to provide written basis for the denial of the claim.	3
CCR §2695.7(f)	The Company failed to provide written notice of any statute of limitation or other time period requirement not less than sixty days prior to the expiration date.	2
CCR §2695.8(i)	The Company failed to provide written notification to a first party claimant as to whether the insurer intends to pursue subrogation.	2
CCR §2695.7(b)(3)	The Company failed to maintain hard copy claim files or maintain claim files that are accessible, legible and capable of duplication to hard copy for five years.	2
CCR §2695.3(a)	The Company's claim file failed to contain all documents, notes and work papers which pertain to the claim.	1
CCR §2695. 5(e)(1)	The Company failed to acknowledge notice of claim within fifteen calendar days.	1
CCR §2695.7(e)	The Company delayed or denied settlement of a first party claim on the basis that responsibility for payment should be assumed by others.	1
CCR §2695.7(g)	The Company attempted to settle a claim by making a settlement offer that was unreasonably low.	1
CCR §2695.8(f)	The Company failed to supply the claimant with a copy of the estimate upon which the settlement is based.	1
CCR §2695.8(k)	The Company failed to document the basis of betterment, depreciation, or salvage. The basis for any adjustment shall be fully explained to the claimant in writing.	1
Total Citations		84

SUMMARY OF CRITICISMS, INSURER COMPLIANCE ACTIONS AND TOTAL RECOVERIES

The following is a brief summary of the criticisms that were developed during the course of this examination related to the violations alleged in this report. This report contains only alleged violations of Section 790.03 and Title 10, California Code of Regulations, Section 2695 et al. In response to each criticism, the Company is required to identify remedial or corrective action that has been or will be taken to correct the deficiency. Regardless of the remedial actions taken or proposed by the Company, it is the Company's obligation to ensure that compliance is achieved. The total money recovered was \$20.96 within the scope of this report.

1. The Company failed to adopt and implement reasonable standards for the prompt investigation and processing of claims arising under insurance policies.

In 13 instances, the Company failed to adopt and implement reasonable standards for the prompt investigation and processing of claims arising under insurance policies. The Department alleges these acts are in violation of CIC § 790.03(h)(3).

Summary of Company Response:

By the start date of the exam, multiple changes had been instituted or were in the process of being instituted in the automobile claims processing unit. This included the placement of a new Vice President of Claims and two new claims managers, a Claims Trainee Program (CTP) as well as ongoing training for the rest of the technical staff. The CTP consists of multi-stages that include class work, one-on-one and group training classes. These classes include written tests and evaluations of progress. The ongoing training consists of primarily targeted seminars on topics including regulatory compliance. The Company is holding such seminars approximately once per month. All employees receive a copy of the regulations and training in compliance. At the time the initial claims are input into the system, an electronic diary is set for the claims representative to complete the required tasks. In addition a supervisor over diary is electronically kept to ensure timely contact, evaluation and statute notices.

In addition, claims file audits are now conducted on a monthly basis to ensure compliance. These audits include overview for timely contact, documentation, investigation, reserving and regulatory compliance. The individual audits are compiled to identify any trends. A portion of the audited files is re-audited by a claims manager. These measures are designed to assure compliance with The Fair Claims Regulation Practices and the California Insurance Code.

2. The Company failed to provide a written notice of the need for additional time every thirty-calendar day. In 13 instances, the Company failed to provide written basis for the denial of the claim. The Department alleges these acts are in violation of CCR § 2695.7(c)(1).

Summary of Company Response: The Company has acknowledged the above instances of non-compliance. The Company has implemented the training and supervision strategy outlined in response number one to assure compliance with CCR § 2695.7(c)(1).

3. The Company failed to accept or deny the claim within forty calendar days. In 10 instances, the Company failed to accept or deny the claim within forty calendar days. The Department alleges these acts are in violation of CCR § 2695.7(b).

Summary of Company Response: The Company has acknowledged the above instances of non-compliance. The Company has implemented the training and supervision strategy outlined in response number one to assure compliance with CCR § 2695.7(b).

4. The Company failed to begin investigation of the claim within fifteen calendar days. In six instances, the Company failed to begin investigation of the claim within fifteen calendar days. The Department alleges these acts are in violation of CCR § 2695.5(e)(3).

Summary of Company Response: The Company has acknowledged the above instances of non-compliance. The Company has implemented the training and supervision strategy outlined in response number one to assure compliance with CCR § 2695.5(e)(3).

5. The Company failed to explain in writing for the claimant the basis of the fully itemized cost of the comparable automobile. In six instances, the Company failed to explain in writing for the claimant the basis of the fully itemized cost of the comparable automobile. The Company used a vendor market evaluation to determine the cost of comparable vehicles. The Company did not send a copy of the market evaluation to the policyholder. The Company did not provide any documentation to the policyholder on how the cost of the comparable vehicle was determined. The Department alleges these acts are in violation of CCR § 2695.8(b)(1).

Summary of Company Response: The Company has acknowledged that a copy of the Market evaluation was not sent in four of the six files noted. It is, however, part of the Company's current practice to send the evaluation reports on all total losses with a breakdown of the offer.

6. The Company failed to document the determination of value. In six instances, the Company failed to document the determination of value. Any deduction from value, including deduction for salvage, must be discernable, measurable, itemized, and specified as well as be appropriate in dollar amount. The conditions that were said to support a deduction from the value of comparable vehicles were not documented in the claim files. There was no indication that the policyholders were informed that the settlement would not be sufficient to purchase a vehicle of similar year, make, and mileage from an auto dealership. As the Company maintains that they are not in violation, they have not indicated that any change in their evaluation methods is forthcoming. The Department alleges these acts are in violation of CCR § 2695.8(b)(1)(C).

Summary of Company Response: The Company disputes this allegation. The Company finds nowhere in the Insurance Code or Claims Handling Regulations a requirement to notify policyholders of the sufficiency of a settlement for purchasing of a vehicle from an auto dealership. Rather, the regulation reflects a requirement to determine the value of the actual cash value of the loss vehicle. The “baseline” or dealer preparation adjustments are not made to the value of the loss vehicle, but rather are made only to those comparable vehicles, which were found in dealer inventory. These adjustments are explained in all cases in the valuation as follows: “The baseline is defined as the typical vehicle on the road. A typical vehicle has not been prepared for sale. Baseline adjustments align a dealer ready vehicle with the typical vehicle on the road.” In accordance with this, the comparable vehicles used in the valuation are individually adjusted to reflect the typical vehicle, then adjustments, which are properly documented, are included and itemized in the evaluation report.

The Company believes the Code of Regulations section cited [2695.8(b)(1)(C)] is not applicable. The Company believes this section only applies if the Company fails to use one of the valuation methods described in CCR Section 2695.8(b)(1)(A) or 2695.8(b)(1)(B). The Company believes their valuations all meet the requirements of CCR Section 2695.8(b)(1)(A) and are therefore not subject to the requirements of 2695.8(b)(1)(C) which states, in part: when an automobile total loss is adjusted or settled on a basis which varies from the methods described in subsections (b)(1)(A) and (b)(1)(B) of this section...”

Based on the Company’s review and interpretation, we believe the violation(s) as cited are in error.

This is an unresolved issue and may result in further administrative action.

7. The Company failed to disclose all policy provisions.

In five instances, the Company failed to disclose all benefits, coverage, time limits or other provisions of the insurance policy. The Department alleges these acts are in violation of CCR § 2695.4(a).

Summary of Company Response: The Company has acknowledged four of the above instances of non-compliance. In one instance the Company contends that the violation was a matter of semantics. This involved the Company's use of the word "may" in reference to payment of profit and overhead on dwelling repairs. The Company has agreed to use "is" compensable in the future. The Company has implemented the training and supervision strategy outlined in response number one to assure compliance with CCR § 2695.4. (a)

8. The Company failed to provide necessary forms, instructions, and reasonable assistance within fifteen calendar days.

In five instances, the Company failed to provide necessary forms, instructions, and reasonable assistance within fifteen calendar days. The Department alleges these acts are in violation of CCR § 2695.5(e)(2).

Summary of Company Response: The Company has acknowledged the above instances of non-compliance. The Company has implemented the training and supervision strategy outlined in response number one to assure compliance with CCR § 2695.5(e)(2).

9. The Company failed to respond to communication within fifteen calendar days.

In five instances, the Company failed to respond to communications within fifteen calendar days. The Department alleges these acts are in violation of CCR § 2695.5(b).

Summary of Company Response: The Company has acknowledged the above instances of non-compliance. The Company has implemented the training and supervision strategy outlined in response number one to assure compliance with CCR § 2695.5(b).

10. The Company failed to provide written basis for the denial of the claim.

In three instances, the Company failed to provide written basis for the denial of the claim. The Department alleges these acts are in violation of CCR § 2695.7(b)(1).

Summary of Company Response: The Company has acknowledged the above instances of non-compliance. The Company has implemented the training and supervision strategy outlined in response number one to assure compliance with CCR § 2695.7(b)(1).

11. The Company failed to Comply with the Fair Claims Regulations Practices. In two instances each, the Company failed to comply with the following Fair Claims Regulations Practices: CCR § 2695.7(f), CCR § 2695.8(i), CCR § 2695.7(b)(3). In one instance each the Company failed to comply with the following Fair Claims Regulations Practices: CCR § 2695.3(a), CCR § 2695.5(e)(1), CCR § 2695.7(e), CCR § 2695.7(g), CCR § 2695.8(f), CCR § 2695.8(k).

Summary of Company Response: The Company has implemented the training and supervision strategy outlined in response number one to assure compliance with the Fair Claims Regulations Practices for each of the regulations cited. However, Explorer disagrees that it made a settlement offer that was unreasonably low. (CCR § 2695.7(g)). Explorer applied depreciation (or holdback) to labor in addition to materials. It is the Company's opinion that this is an acceptable practice. We understand that the DOI legal division disagrees that this is an acceptable practice. Explorer has agreed not to apply depreciation to labor in the future; however, it does not believe it has violated any laws by doing so in the past.